

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 73

AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-2.1-26 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 26. Invalidity of Indemnity Agreements in Motor Carrier Transportation Contracts

Sec. 1. This chapter applies to an indemnity provision entered into or renewed after June 30, 2006.

Sec. 2. As used in this chapter, "indemnity provision" means a provision, a clause, a covenant, or an agreement that:

- (1) is contained in, collateral to, or affecting a motor carrier transportation contract; and**
- (2) purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, a promisee against liability for loss or damage resulting from:**
 - (A) negligence;**
 - (B) intentional acts; or**
 - (C) omissions;**

of the promisee or an agent, employee, servant, or independent contractor that is directly responsible to the promisee.

Sec. 3. As used in this chapter, "motor carrier transportation contract" means a contract, an agreement, or an understanding

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covering:

- (1) the transportation of property for compensation or hire by a motor carrier as defined under this article or by 49 U.S.C. 13102(12);
- (2) the entrance on real property by a motor carrier to:
 - (A) load;
 - (B) unload; or
 - (C) transport property for compensation or hire; or
- (3) a service incidental to an activity described in subdivision (1) or (2), including storage of property.

Sec. 4. As used in this chapter, "promisee" means a person that an indemnity provision:

- (1) purports to indemnify, defend, or hold harmless; or
- (2) has the effect of indemnifying, defending, or holding harmless.

Sec. 5. (a) This section does not apply to any of the following:

- (1) An indemnity provision in which a motor carrier indemnifies a promisee for and only to the extent of loss or damage that results directly from the negligence, omission, or intentional act of the motor carrier or an agent, employee, servant, or independent contractor that is directly responsible to the motor carrier.
- (2) An indemnity provision contained in, collateral to, or affecting a motor carrier transportation contract with a regulated public utility, including an energy utility (as defined in IC 8-1-2.5-2) or an affiliate of an energy utility, if the contract relates to a utility product, service, or business operation. For purposes of this subdivision, a contract relates to a utility product, service, or business operation if it involves an activity necessary for or ancillary to the production or delivery of heat, power and light, or a product or service under the jurisdiction of the Indiana utility regulatory commission (as described by IC 8-1-1).
- (3) The Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America.

(b) Notwithstanding any other law, an indemnity provision under this chapter is:

- (1) against public policy; and
- (2) void and unenforceable.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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